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FRANCIS C. KOWALIK WALGREEN CO. LAW DEPARTMENT 104 WILMOT ROAD M.S. #1425 DEERFIELD, IL 60015			EXAMINER SHAPIRO, JEFFERY A	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* J. RANDOLPH LEWIS

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Appeal 2009-008679  
Application 10/047,220  
Technology Center 3600

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Before: JENNIFER D. BAHR, STEVEN D.A. MCCARTHY, and FRED A.  
SILVERBERG, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.



## STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-3, 5-9, 14-23, 39, and 43 under § 103(a) as unpatentable over Emsley (US 4,509,635, iss. Apr. 9, 1985) and Boyd (US 6,208,908 B1, iss. Mar. 27, 2001). Claims 40-42 have been withdrawn; claims 4, 10-13, and 24-38 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

Claim 1, reproduced below with emphasis added, is illustrative of the claimed subject matter:

1. A dumping station for use in a stock order filling system, the dumping station comprising:

a collection area including a conveyor;

*a bin disposed adjacent the conveyor, the bin having a receiving end, a discharge end, and an opening extending between the receiving end and the discharge end, the receiving end of the opening adapted to receive articles, the bin having a dump mode, in which articles in the bin are discharged from the discharge end of the opening onto the collection area, and a pick mode, in which the articles are retained in the receiving end of the bin, the bin being biased under force of gravity toward the dump mode, the bin being rotatable about an axis, the bin having a center of gravity laterally offset from the axis toward the discharge end;*

an electronically controllable releasable latch selectively engageable with the bin, the latch selectively securing the bin in the pick mode against the force of gravity, the latch being responsive to a release signal to release the bin; and

a controller operably coupled to the latch and having a processor programmed to generate the release signal to release the latch, wherein upon the latch releasing the bin, the bin automatically switches from the pick mode to the dump mode under the force of gravity by rotating about the axis thereby to discharge the articles in the bin directly onto the conveyor;

wherein the processor is programmed to generate the release signal as a selected area of the conveyor passes the dumping station.



SUMMARY OF DECISION

We AFFIRM-IN-PART.

OPINION

*Claim 1 – "Opening"*

In relevant part, the Examiner rejected claim 1 by finding that Emsley describes a bin 2 having a receiving end (top) and a discharge end (flap 9) with an opening (the passage between) extending between the two ends. Ans. 3, 8. Appellant argues that Emsley does not describe "a single opening extending between [the ends] such that articles are received into and discharged from the opening." Appeal Br. 14. In particular, Appellant argues that Emsley describes two openings, one at each end. Appeal Br. 15. Appellant argues that Emsley describes a "chute or tube" and that one of ordinary skill in the art would understand "opening" to mean "aperture." Reply Br. 13-14. Thus, the first issue before us is whether the opening of claim 1 reads on a passageway.

It is well settled that the United States Patent and Trademark Office (USPTO) is obligated to give claim terms their broadest reasonable interpretation, taking into account any enlightenment by way of definitions found in the specification. *In re ICON Health and Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007) ("[W]e look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation."). "[A]s applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee." *Id.* at 1379.



"Opening" is a broad term that encompasses both Appellant's "aperture" and the Examiner's "passage" interpretations<sup>2</sup>. We find no mention of the word "opening" in the Specification, let alone a special definition that would restrict "opening" to "aperture" or a similar meaning. In fact, the Specification depicts an embodiment where the connection between the receiving end and discharge end is a "passage"-type opening. *See* fig. 8. Further, that two references happen to use the word "opening" in a certain way is not indicative that "opening" has a special meaning to one of ordinary skill in the art. *See In re Morris*, 127 F.3d 1048, 1056 (Fed. Cir. 1997) ("Absent an express definition in their specification, the fact that appellants can point to definitions or usages that conform to their interpretation does not make the PTO's definition unreasonable"). Rather, the word is merely being used according to one of its common meanings. We decline Appellant's invitation to read a limitation into the claim during the course of prosecution when neither the claim nor the Specification indicates a clear intention of limiting the claim in such a way. Consequently, Appellant has not demonstrated that the Examiner erred in finding that Emsley describes an opening as recited in claim 1.

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<sup>2</sup> A dictionary definition of "opening" is "2. An open space serving as a passage or gap. 3. A breach or aperture." *The American Heritage® Dictionary of the English Language* (retrieved from <http://credoreference.com/entry/hmdictenglang/opening>) (last visited Jan. 5, 2011).



*Claim 43 – "open front"*

Claim 43 requires a bin with "a bottom wall, a rear wall fixed to the bottom wall, opposing sidewalls fixed to the bottom and rear walls, an open top, and an open front." The Examiner found that Emsley describes a bin having an open top and an open front covered by a lid 9. Ans. 8. Appellant argues that Emsley describes an open top and an open bottom. Appeal Br. 15. Thus, the second issue before us is whether Emsley describes the bin of claim 43, having an open top and open front.

Initially, we note that the labels "front," "top," and "bottom" signify relative terms, having meaning only according to predefined relationships establishing the front, top, or bottom. We find that Figure 3 of Emsley depicts four bins, two outer bins having the lid facing down and rearward and two inner bins having the lid facing down and forward. In each case the top opening is opposite the lid opening.<sup>3</sup> While these *opposed* openings can reasonably be considered top and bottom openings, side openings, or front and rear openings, they are not top and front openings as called for in claim 43, which requires the openings and walls to be arranged in a particular configuration.

*Rationale for Combination*

Appellant argues at sections C and D of the Appeal Brief that the Examiner's rationale for combination is lacking. Appeal Br. 15-16. It is unclear to which claims Appellant is referring. Appellant argues that it would not have been obvious to modify Boyd or Emsley to have "a common

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<sup>3</sup> This is in contrast to the Examiner's finding that the front opening is at 90 degrees from the top opening. Ans. 8.



opening for receiving and discharging articles." Appeal Br. 16. As we found above, with respect to claim 1, this argument fails to appreciate the scope of the claim, which does not require the receiving and discharging to be through a common aperture. In addition, the Examiner does not propose to modify the bin in Boyd, or modify the bin in Emsley to incorporate any features of the bin in Boyd.

Appellant also argues that there is no suggestion to modify Emsley or Boyd. Appeal Br. 16. However, Appellant relies on the wrong legal standard (TSM) and does not set forth any actual arguments specifically pointing out error in the Examiner's findings or reasoning. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 415 (2007) ("[w]e begin by rejecting the rigid [TSM] approach of the Court of Appeals"). Thus, Appellant has not set forth any convincing arguments with respect to the Examiner's proposed reason for combining the bin system of Emsley with the bin control system of Boyd.

### *Conclusions*

We are not persuaded that the Examiner erred in finding that Emsley describes a bin having an opening as recited in claim 1. Appellant argues claims 1, 15, and 39, as a group. In addition, Appellant does not raise any separate arguments specifically directed to dependent claims 2, 3, 5-9, 14, and 16-23. Thus, claims 2, 3, 5-9, 14, 15, 16-23, and 39 fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii). We sustain the Examiner's rejection of claims 1-3, 5-9, 14-23, and 39.



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We are persuaded that the Examiner erred in finding that Emsley describes a bin having the particular configuration recited in claim 43. In addition, the Examiner does not articulate any reason why it would have been obvious to modify the bin in Emsley to have such a configuration. As such, we do not sustain the Examiner's rejection of claim 43.

#### DECISION

For the above reasons, we affirm the Examiner's decision regarding claims 1-3, 5-9, 14-23, and 39, and reverse the Examiner's decision regarding claim 43.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

#### AFFIRMED-IN-PART

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